

GARY E. STRONG

IBLA 81-834

Decided August 31, 1981

Appeal from decision of California State Office, Bureau of Land Management, rejecting, in part, noncompetitive oil and gas lease offer CA 9695.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Description -- Words and Phrases

"Smallest legal subdivision." Where an oil and gas lease offer is made, the smallest legal subdivision which may be encompassed by the offer is a quarter-quarter section (40 acres), unless the offer is for a lot in a fractional section.

2. Oil and Gas Leases: Applications: Description

A noncompetitive oil and gas lease offer filed for land included in an approved protraction diagram must include an entire section described according to the section, township, and range shown on the approved protraction survey. Offers may include less than an entire section only where a portion of the section is available, and then the offer must describe all the available land by subdivisional parts.

APPEARANCES: Gary E. Strong, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gary E. Strong appeals the decision of June 8, 1981, in which the California State Office, Bureau of Land Management (BLM), rejected, in part, his noncompetitive oil and gas lease offer CA 9695 because the lands sought were described by less than a 40-acre subdivision.

The offer described the lands sought as follows:

T. 9 S., R. 10 E., S.B.M., Imperial County, California

- sec. 1: N 1/2 N 1/2 N 1/2
- 2. N 1/2 N 1/2 N 1/2
- 3. N 1/2 N 1/2 N 1/2
- 4. N 1/2 N 1/2 N 1/2, SW 1/4 SW 1/4
- 5. N 1/2 N 1/2
- 6. N 1/2 N 1/2

The parts of sections 1, 2, 3, and 4 described as "N 1/2 N 1/2 N 1/2" were rejected.

Appellant argues that the smallest legal subdivision in his offer was 80 acres, so that the rejection is invalid.

[1] In the BLM Glossary of Public Land Terms (1949 Ed.), are found definitions of "legal subdivision," "regular subdivision," and "smallest legal subdivision."

A legal subdivision is defined as:

In a general sense, a subdivision of a township, such as a section, quarter section, lot, etc., which is authorized under the public-land laws; in a strict sense, a regular subdivision.

A regular subdivision is defined as:

Generally speaking, a subdivision of a section which is an aliquot part of 640 acres, such as a half section of 320 acres, quarter section of 160 acres, and quarter-quarter section of 40 acres.

Finally, a smallest legal subdivision is defined as:

For general purposes under the Public Land Laws, a quarter-quarter section.

The interpretation of the "smallest legal subdivision" as a quarter-quarter section follows a well-established principle. In Warren v. Van Brunt, 86 U.S. (19 Wallace) 646, 652 (1873), the Supreme Court stated that there is no legal subdivision of the public lands less than a quarter of a quarter section, or 40 acres, except in the case of fractional sections. State courts have similarly held that the smallest legal subdivision is a quarter-quarter section. Hopper v. Nation, 96 Pac. 77 (Kansas 1908), Greenblum v. Gregory, 294 Pac. 971 (Washington 1930). The Department has used this interpretation in State of Arizona, 53 I.D. 149 (1930). See also Partial Assignments Under Section 30(a) of The Mineral Leasing Act, 76 I.D. 108 (1969).

Although each of the parcels rejected aggregates 80 acres, each is composed of half of four quarter sections. The smallest legal subdivision which may be used in an oil and gas lease offer is a quarter-quarter section, unless the section has been lotted. 43 CFR 3103.3-1. For that reason the BLM action was correct.

[2] There is, however, a more compelling reason to reject this lease offer in its entirety. Notice of California Protraction Diagram No. 14 was published in the Federal Register, December 7, 1966 (31 FR 15328). The notice stated that, effective January 16, 1967, the protraction became the basic record for describing the land for all authorized purposes. Protraction Diagram No. 15 included all sections 1 through 5, E 1/2 section 6, inter alia, in T. 9 S., R. 10 E., San Bernardino meridian.

The regulation, 43 CFR 3101.1-4 Description of lands in [oil and gas] offer, provides

(a) Surveyed lands. If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range.

* * * * *

(d) Protracted surveys. (1) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(2) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

* * *

As the subject offer included less than entire sections of the protracted diagram, it must be rejected for that reason as to all land described in sections 1 through 5, and the E 1/2 section 6.

The remaining surveyed land described in the offer, NW 1/4 sec. 6, may not be leased because it is less than 640 acres in extent, and contiguous land was available for leasing at the time the offer was filed. An oil and gas offer to lease less than 640 acres which adjoin lands available for leasing must be rejected. Alice Hays, 36 IBLA 313 (1978).

The BLM decision of June 8, 1981, is modified to reflect the holdings set forth above.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision, as modified, is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

